

PROCEDURE FOR THE MPDU ALTERNATIVE REVIEW PROCESS

Effective April 1, 2005

The Moderately Priced Housing Law includes several options for developers to take advantage of Alternative Compliance Measures to provide MPDUs. On November 30, 2004, amendments to the MPDU law were adopted by the County Council in Bill No. 24-04/25-04/27-03 (technical corrections were made in Bill No. 4-05). These amendments added a new decision making group to the Alternative Agreement approval process called the Alternative Review Committee (ARC). The ARC is made up of the Director of the Department of Housing and Community Affairs (DHCA), the Director of Park and Planning, and the Executive Director of the Housing Opportunities Commission (HOC). Several text amendments to the Zoning Ordinance were also adopted that provide flexibility to the Montgomery County Planning Board in approving development applications to encourage the provision of MPDUs on site.

The DHCA created this handout to outline the steps required in implementing the allowable Alternative Compliance Measures specified in the MPDU law. Attachment 1 outlines the options available to developers. This attachment includes a synopsis of the applicability of the options, information on where the request should be submitted, what entity makes the decision on the request, and whether or not the Alternative Review Committee must consider the economic feasibility of the project.

Step 1. Voluntary Pre-application Conference for Concept Development

In the current development review process, applicants may meet with Park and Planning staff prior to filing an application for development. At this meeting, Park and Planning staff provides applicants with a list of required items that must be filed with their applications. After April 1, 2005, Department of Housing and Community Affairs (DHCA) staff will participate in the DRC process. If the developer wants to request approval of an Alternative Compliance Measure, the developer must convey that request to DHCA and Planning staff during the pre-application process. Likewise, requests for additional density or height above that specified in the Master Plan must be conveyed to Park and Planning staff at this time.

Applicants should contact Park and Planning staff to set up the meeting, and the staff at Park and Planning will notify appropriate staff from DHCA. Alternatively, applicants may meet individually with DHCA staff.

<p style="text-align: center;">Attachment A Option Chart for Alternative Compliance Measures*</p>				
<i>Option</i>	<i>Time and Entity of Submission</i>	<i>Applicability</i>	<i>Approval Entity</i>	<i>Economic Feasibility Model with ARC Review Required?</i>
1. Provide MPDUs at an Alternative Location in Same Policy Area [Section 25A-5B]	Submit to DHCA Director not less than 45 days prior to the submission of Preliminary or Site Plan Application	High-rise Residential Buildings	DHCA Director	No
2. Transfer Land to the County for the Construction of Units [Section 25A-5(f)(1)]	Submit to DHCA Director not less than 45 days prior to the submission of Preliminary or Site Plan Application	All Developments that Require MPDUs	DHCA Director	No
3. Full or Partial Waiver of Number of MPDUs to be Built [Section 25A-6(b)]	Submit to Planning Board as part of submission of Preliminary Plan or Site Plan Application	All Developments that Require MPDUs	Planning Board	No
4. Alternative Payment to the HIF for Some or All Units Due to High Condo Costs or HOA fees [Section 25A-5A(1)(A)]	Submit to DHCA Director not less than 45 days prior to submission of Preliminary or Site Plan Application	For-sale MPDU Projects with condo or HOA fees	DHCA Director	Yes
5. Alternative Payment to the HIF for Some or All Units due to Environmental Constraints [Section 15A-5A(1)(B)]	Submit to DHCA Director not less than 45 days prior to submission of Preliminary or Site Plan Application	All Developments that Require MPDUs	DHCA Director	Yes
6. Request Additional Height or Density Above Master Plan or Sector Plan [Zoning Ordinance Section 59-D-1.61(a)] *Note: All MPDUs must be provided on-site if this option is used.	Submit to Planning Board 45 days prior to submission of application for project requiring Development Plan or Project Plan for Optional Method of Development	Applications Requiring Development Plans or Project Plans for Optional Method of Development	Planning Board (Project Plan) or District Council (Development Plan)	Yes
7. Build Fewer or No MPDUs in Certain Developments [Section 25A-5(d)(1)]	Submit to DHCA Director after Planning Board Finding	Developments with more than 20 but less than 50 units at one location	DHCA Director with Planning Board Finding	No

* NOTE: For those developments that proceed directly to Building Permit for approval, substitute Department of Permitting Services (DPS) for Planning Board

In the case of applications that do not require Planning Board approval, the request for approval of an Alternative Compliance Measure must be submitted 45 days prior to submission of a building permit application to the Department of Permitting Services.

Step 2. Application Review Process

Confidentiality - In the case of required findings of financial infeasibility, financial information that the applicant identifies as being confidential will only be available to the minimum number of staff and/or consultants required to review the information to make a finding of financial infeasibility. Confidentiality of the information submitted will be maintained in accordance with the Public Information Act, Section 10-601, *et seq.* of the State Government Article.

Once the requests are submitted, they will go through appropriate review processes, as follows:

A. DHCA Director Decision without ARC review (Options 1, 2, 7)

1. Requests for approval of Alternative Compliance Measures under these options must be submitted to the DHCA Director not less than 45 days prior to the filing of a development application with the Planning Board.
2. In any development where only a building permit is required, the request for approval of an Alternative Compliance Measure must be submitted to the Director of DHCA not less than 45 days prior to submission of a building permit application to the Department of Permitting Services.
3. The DHCA Director may consult with the County Attorney and Planning Board to receive input prior to approving a request for an Alternative Compliance Measure. The Director may also request a meeting with the applicant.
4. The DHCA director will provide a decision on the request for approval of an Alternative Compliance Measure to the applicant prior to the applicant's filing of the application.
5. The Director will submit a memo to the applicant and to the Planning staff for inclusion in the staff report on the application that goes to the Planning Board for its consideration at the time that the Board takes action on the application.
6. The Planning Board will send a copy of its development approval to the DHCA Director and to DPS.

B. DHCA Director Decision with ARC review (Options 4, 5)

1. Requests for approval of a request for Alternative Payments must be submitted to the DHCA Director not less than 45 days prior to filing of a development application with the Planning Board. The request must include a rationale for why the request should be granted. The Developer must provide evidence regarding why this request should be granted, as well as the required Economic Feasibility Model inputs. The Preliminary Plan or Site Plan application will contain a checkoff box to notify the Park and Planning staff that a request for building less than the required MPDUs has been submitted to DHCA.
2. DHCA staff will distribute the requests to the ARC and the consultant for review upon receipt of the request. A recommendation by the ARC will be made to the DHCA Director within 45 days. Based on the ARC recommendation, the Director may recommend an Alternative Compliance Agreement. This recommendation will be sent to the applicant prior to filing of the development application.
3. The Director will submit a memo to the applicant and the Planning staff for inclusion in the staff report on the application that goes to the Planning Board for its consideration at the time that the Board takes action on the application.
4. The Planning Board will send a copy of its decision on the application to the DHCA Director and DPS.

C. Planning Board Decision without ARC review (Option 3)

1. A request for a full or partial waiver of the MPDU requirement must be submitted to the Planning Board concurrently with the application being submitted for development review. Requests must be made in writing stating the reasons that the full density of the zone cannot be attained because of requirements of the Zoning Ordinance, master plan, or other laws or regulations. The request must contain substantiation in the form of plans, plats, and all other pertinent material which will assist in evaluating the conditions. Under this request, any MPDUs that are required must be built on-site.
2. The applicant must also send a copy of the waiver request to the Director of DHCA who will consult with the Planning Board. The Department's recommendation must be considered by the Planning Board in determining whether to grant or deny the Applicant's request for a waiver.

3. The Planning Board will send a copy of its decision to the DHCA Director and DPS.

D. Planning Board Decision with ARC review (Option 6)

1. Requests for approval of a modification to the sector plan height or density requirements must be submitted to the Planning Board not less than 45 days prior to filing of a development application with the Planning Board. Applications are submitted to Development Review Division. The Developer must provide evidence regarding why this request should be granted, as well as the required Economic Feasibility Model inputs.
2. Planning Board staff will distribute the requests to the ARC and the consultant for review upon receipt of the request. A recommendation by the ARC will be made to the Planning Board staff and the applicant within 45 days.
3. The Planning Board staff will include the ARC recommendation in its memo to the Planning Board for its consideration at the time that the Board takes action on the application.
4. The Planning Board will send a copy of its decision to the DHCA Director and DPS.

Step 4 – Follow-up to Alternative Compliance Measure Approval

Once an Alternative Compliance Measure is approved, the applicant must submit an Alternative Agreement for providing MPDUs to the DHCA for final approval. This Agreement will be reviewed by the County Attorney.